

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15777 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MAHENDRABHAI CHHOTUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15777 of 2003
MR HR PRAJAPATI for Petitioner No. 1
MR MR PRAJAPATI for Petitioner No. 1
MR. L.R. PUJARI, LD. AGP for Respondent No. 1-3
RULE SERVED for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/03/2004

ORAL JUDGEMENT

1. Mr. L.R. Pujari, learned AGP has placed on record the affidavit in reply filed by respondent No.2, same is kept on record.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the detention order No: DCB/MAG/PASA/Regn. No.15/03 dated 12-9-2003 (Annexure-A) passed by Respondent No.2 under section 3 (1) of The Gujarat Prevention of Anti Social Activities Act, 1985 (herein after referred to 'PASA Act') and prays for quashing and setting aside of the same.

3. The grounds of detention (Annexure-B) suggests 4 cases registered under the provisions of Bombay Prohibition Act which came to be registered against the petitioner - detenu under section of 66 (1) B, 65 A, E, 116 (B), 81 of the said Act. It is suggested that in big quantity whisky and beer came to be recovered from the petitioner in the cases registered against the him. For levelling the petitioner as 'bootlegger' statements of two witnesses in unregistered cases relating to the incident of 1-7-2003 and 13-7-2003 came to be recorded.

The identity of the witnesses have been withheld invoking privilege under section 9 (2) of the PASA Act. It is stated in the grounds of detention that the statements of the witnesses were verified by the detaining authority on 27-8-2003 and 28-8-2003 and that the witnesses voluntarily gave information in their statements which were verified by the detaining authority and the identity was requested to be withheld for the reason of apprehension to the person and property of the witnesses.

4. Challenging the order of detention, it has been submitted by Mr. Prajapati, learned advocate for the petitioner that verification of the statements of witnesses by the detaining authority is stereo type; that there is no exercise undertaken as required under section 9 (2) of the PASA Act in as much as there is no contemporaneous material to suggest the genuineness of the statements given by the witnesses or the genuineness of the fear expressed by the witnesses, and also as regards the verification of the veracity of the incident alleged against the petitioner. That the same statements of the witnesses reiterated before the detaining authority would not be sufficient to invoke section 3 (1) of the PASA Act.

5. It is settled legal position that the detaining

authority has to take into consideration the background, antecedents, character etc. of the detenu while considering the need for exercise of powers under section 9 (2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on one hand and the public interest on the other and has to strike a balance between the two.

6. The record does not suggest any contemporaneous material to indicate the undertaking of the exercise by detaining authority in the direction of verification of the veracity of the incident, the genuineness of the statements of the witnesses, the genuineness of the fear expressed by the witnesses from the petitioner - detenu and also as regards the antecedents, the background and the character of the detenu; and therefore, the exercise of powers under section 9 (2) of the PASA Act can be taken to have been vitiated. No reliance therefore can be placed. Statements of the witnesses reiterating what has been stated by the witnesses earlier stated before the police authority for sustaining the impugned detention order for want of proper exercise of powers contemplated under section 9 (2) of the PASA Act cannot be accepted, as there is no material to indicate the exercise of such power as stated earlier.

7. In the above view of the matter, the impugned order of detention is liable to be quashed and set aside for want of proper exercise of powers under section 9 (2) of the PASA Act for reaching subjective satisfaction as regards the invoking of the privilege under section 9 (2) of the Act.

8. In the result, the petition is granted and accordingly allowed. The impugned detention order No: DCB/MAG/PASA/Regn. 15/03 dated 12-9-2003 (Annexure-A) by Respondent no.2 is quashed and set aside. The petitioner detenu Mahendrabhai Chhotubhai Patel is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service permitted.

Dt: 4-3-2004

(N.G. Nandi, J)

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